

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF MEETING
APRIL 4, 2006**

CALL TO ORDER

The regular meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Committee members present were Tony Sagami, Gina Klempel, Scott Hollinger, Mark Hash, and Denny Rea. Traci Tull, Eric Giles, Kirsten Holland, and Nicole Lopez-Stickney represented the Flathead County Planning & Zoning Office (FCPZ).

There were approximately 28 people in the audience.

**APPROVAL OF
MINUTES**

Hash made a motion seconded by Sagami to approve the February 7 minutes as written and the March 7, 2006 minutes as amended by Klempel.

The motion passed unanimously.

**CONDITIONAL USE
PERMIT/FUZE INC.
(FCU 06-05)**

A request by Fuze, Inc. for a Conditional Use Permit to operate a tavern within the Lakeside Zoning District. The property is located at 7254 Highway 93 S. A convenience store currently operates onsite.

STAFF REPORT

Traci Tull of the Flathead County Planning & Zoning Office reviewed Staff Report FCU 06-05 for the Board.

BOARD QUESTIONS

Sagami asked for clarification on condition #9 in regards to music.

Klempel asked if MDOT has done any studies regarding storm water drainage.

Hash asked about the proximity of this project to the school.

APPLICANT

Kristen Sullivan, represented the applicant. He discussed the proposal and addressed the music concern.

PUBLIC COMMENT

Kip Willis, 445 Lost Creek Lane, spoke highly of the applicant in regards to this project. He said the applicant worked with the Lakeside Community Council and is trying to better the community.

STAFF REBUTTAL

None.

APPLICANT REBUTTAL

None.

MOTION	Hash made a motion seconded by Klempel to adopt Staff Report FCU 06-05 as findings of fact, as amended, and issue a conditional use permit.
BOARD DISCUSSION	<p>Hash asked the applicant about outdoor activity and noise.</p> <p>The applicant said he didn't have a problem with a condition regarding this concern.</p> <p>The Board discussed condition #9. Hash came up with wording to clarify the intent of this condition.</p>
ROLL CALL	On a roll call vote the motion passed unanimously.
CONDITIONAL USE PERMIT/VERIZON WIRELESS (FCU 06-04)	A request by Harold B. Lowden Family Farm Trust for a Conditional Use Permit to allow an unmanned wireless telecommunication facility on property located at 2411 Lower Valley Road.
STAFF REPORT	Eric Giles of the Flathead County Planning & Zoning Office reviewed Staff Report FCU 06-04 for the Board.
BOARD QUESTIONS	<p>Rea asked the height of the tower. Staff replied 150ft.</p> <p>Hollinger inquired about air traffic and wondered if it's a good idea to have the structure camouflaged.</p>
APPLICANT	Cyrus Ghussabeh, applicant's representative, told the Board about 2 existing tower sites stating they are at capacity and need this additional tower to provide cellular service/coverage. He talked about the airports and said they have to obtain FAA permits. He said they are able to paint the structure any color and that earth tones are appropriate to fit with the character of the area. He said these sites are designed to accommodate additional carriers if needed in the future.
PUBLIC COMMENT	None.
STAFF REBUTTAL	None.
APPLICANT REBUTTAL	None.
BOARD DISCUSSION	<p>Hash discussed the paint color for the tower and asked Staff's opinion. He also wanted the FAA's opinion in regards to safety.</p> <p>Ghussabeh said the FAA usually requests a light on top or vivid red & white "barber pole" paint colors.</p>

MOTION

Hollinger made a motion seconded by Sagami to adopt Staff Report FCU 06-04 as findings of fact, as amended, and grant the conditional use permit.

BOARD DISCUSSION

Hash suggested amending condition #4 to state the painting of the tower should be of a color to blend in with the neighborhood, provided it can be done safely. Planning will talk with the Sky Ranch neighborhood and the FAA.

ROLL CALL

On a roll call vote the motion passed unanimously.

**CONDITIONAL USE
PERMIT/
KRUEGER (FCU 06-02)**

A request by Gary Krueger for a Conditional Use Permit for gravel extraction on 80 acres within the West Valley Zoning District. The applicant proposes an initial site of 20 acres, with no more than 40 total acres under extraction at any time. Access to the site will be from West Spring Creek Road. The property is located between Clark Drive and Church Drive.

Gina Klempel recused herself for this agenda item.

STAFF REPORT

Kirsten Holland of the Flathead County Planning & Zoning Office reviewed Staff Report FCU 06-02 for the Board.

BOARD QUESTIONS

Rea brought up the issue of Church Road and said another gravel applicant was deterred from using this as an access road because it's not up to County standards. He also brought up the recent Court ruling in regards to this area being designated "residential".

Sagami asked about the West Valley regulations in regards to the batch plant. He also asked about the water table.

APPLICANT

Linda Conners, represented the applicant. She talked about ownership of the adjacent properties, which are agricultural in nature. She said the only significant impacts, according to the staff report, are traffic and dust. She referenced her letter sent to the Board members, which addressed the main areas of concern. She walked the Board through the letter and elaborated on her concerns with some of the conditions. She said DEQ will investigate the water table and make the appropriate determination.

Gary Krueger, applicant, handed out maps to the Board. He briefed the Board on the history of farming the property, which consists of approximately 600 acres. He said the extraction site would be in the middle of section 15. He talked with adjoining property owners and they don't have a problem with it. He said the sand extracted from his pit would travel about

2.5 miles to a batch plant, which is a lot less than current pits. He acknowledged the fact he previously extracted an amount of sand, in excess of what is allowed by law, without a permit. He said he is cooperating with DEQ and takes full responsibility for going over the limit, which was an honest mistake.

Holland (*Staff*) said WVLUC met twice regarding this proposal and said the vote was 2-2. The 10,000 cu. ft. limit is a DEQ requirement not one from the West Valley Neighborhood Plan, which states a conditional use permit is required for this use.

PUBLIC COMMENT

In Favor

Hank Galpin, 1885 Stillwater Rd, spoke in favor of this project. He owns adjacent property and said the impacts would be minimal. He said if you look County-wide, this is a good place for a gravel pit.

Linda Tutvedt, 2355 West Valley Drive, spoke in favor of this project and objects to several conditions in the Staff Report. She would like to see a larger pit size so stockpiles could be kept below the ground, instead of above ground, blocking the view. She said the noise produced from gravel pits can be heard, but is minimal. She would like to see Mr. Krueger succeed in his business and mentioned she submitted a letter requesting changes be made to the conditions for the Board's review.

Derek Krueger, lives next to where the gravel pit is proposed. He is in favor of this proposal and said it may create additional jobs.

Kip Willis, 445 Lost Creek Lane, said as long as reasonable conditions are put in place he isn't opposed. He doesn't think it would violate the important things: wouldn't destroy/devalue neighboring property, doesn't interfere with neighbor's lives or safety, and doesn't destroy quality of life. He said Mr. Krueger's intentions are good and that he's being a good steward of his land. He said Mr. Krueger is a good neighbor.

Bruce Tutvedt, 2335 W Valley Dr, said he can see the pit from his deck and said it's not that loud. He said he has done a good job so far and he's in favor of this proposal. He talked about "process" and gave suggestions as to what would make things easier. He said the applicant and Staff should meet to come up with appropriate conditions instead of having 2 competing sets of conditions presented at the meeting. He

talked about the West Valley Neighborhood Plan and said he was there during the time it was written. He presented a letter from David Greer, who wrote the plan. He said they should have worded it different and said it was never the intent to limit gravel extraction.

Jeanne Olson, 160 West Valley Acres, spoke in partial support. She said it's a good site for a gravel pit but would like to see Staff's conditions applied with certain exceptions: doesn't think burming is necessary given the location, doesn't think a 5-year permit is long enough, and thinks the extraction area should be 20-acres. She thinks the 200-ft ramps onto the roads are necessary.

Les Keller, 563 McMannamy Draw, spoke in favor of this proposal. He said no one in the West Valley community has "given more" than Gary Krueger. He is a long-time community member that will not "wrong" his neighbors because he plans on living there for a long time and so do his kids. He talked about the burming, size, and time restriction.

Holland (*Staff*) responded to Bruce's comment in regards to meeting with the applicant before the public hearing.

Opposed

Clara LaChapelle, 3580 Farm to Market Rd, is opposed to this pit. There are many lots going in at Harvest View Estates and Church Drive, Farm to Market, and West Reserve can't handle additional trucks. She contacted MDOT regarding road issues, who referred her back to the County. She said there should be at least 300-ft of paved ramp at the intersections if they do pass it. If the Board passes this permit, there will be 3 pits in a 5-mile radius.

Ginny Coyle, 120 Marvins Way, passed out a letter to the Board and asked that her prior concerns be taken into consideration. She believes the primary purpose of this pit is to facilitate crushing and importation of materials; sand & gravel extraction would be secondary. She read her letter to the Board and pointed out her concerns.

Bill Breen, 335 Mountain View Rd, is opposed. He agrees with concerns previously expressed. He disagrees with part of the Staff Report, which states the use is compliant with the West Valley Neighborhood Plan. He was on the committee who wrote the West Valley Neighborhood Plan and said there is confusion about the intent of the neighborhood plan, which was supposed to be designated residential. He read a section of the

plan, and stated the intent was to prohibit commercial uses, including gravel extraction. He commented on conditions in the Staff Report; traffic impact, and hours of operation. He said it isn't easy to get up and speak against your neighbor and he recognizes Mr. Krueger has been a good neighbor. He hopes in the future, and with the development of the new Growth Policy, there will be a good management plan, which will avoid putting "neighbors against neighbors."

Carol Marino, 1555 Church Drive, lives about one mile from the proposed pit and is opposed. She talked about the proposed Riverdale Plan in regards to this pit. She said public safety would be compromised by traffic generated from this pit. If approved, she would like to see a condition requiring the applicant to build and maintain a separate access road to mitigate traffic congestion.

STAFF REBUTTAL

None.

APPLICANT REBUTTAL

Linda Conners said the primary issue raised by Staff and the public was the road issue. She said the gravel, sand, and concrete will have to go on the roads to upgrade County roads. She said this is a County-wide issue, not just Mr. Krueger's. She didn't see a justification as to why 10-acres of active excavation area is significantly different than having 20-acres at one time. She talked about reclamation and said that Mr. Krueger is willing to reclaim as he goes but would like to see different wording in the condition. She said if you provide a way for the large landowners to be able to keep their farmland it would be valuable to the community. She talked again about reclamation and the time limit set forth.

Krueger expressed concern with the 200-ft of asphalt to be placed at the intersection of Church Drive. He said no waste will be buried on-site but asked if he could store up to 2,000 yards of asphalt/concrete while waiting to be crushed. He talked about hours of operation and the reasons why he requested the hours he did. He works during the week and said this gravel operation won't be much different than his farming operation.

BOARD DISCUSSION

Sagami asked Krueger if he would no longer travel on Stillwater Rd to LHC. Krueger said most of the traffic will drive down part of Stillwater Rd en route to LHC.

Sagami asked how many trucks would go down Stillwater Rd per day.

Krueger said probably 2 ½ trips per hour and said he has a

gravel truck that will probably be used.

Rea asked about Church Drive.

Krueger said when it was upgraded, he paid for a portion of the paving and his family took down fencing on their property in order for it to be done. He talked about grading several roads out there and said he would continue to help with maintenance.

Hollinger asked about definitions for the “recycling” part of the applicant’s request.

Holland (*Staff*) said she referred to it as “importation” since nothing is defined in the West Valley plan.

The Board discussed storage of material to be recycled and imported.

Staff responded and referenced sections of the zoning regulations.

Hash said he sympathizes with everyone in the audience but thinks the process is good. He said this is a conditional use not a permitted use therefore it’s going to come with some problems, which can be worked out by Staff and the applicant. He said this is a good spot for a gravel pit and understands issues need to be addressed. He talked about conditions 4 & 5.

Holland (*Staff*) read condition #5 as rewritten following the WVLUC meeting.

Hash talked about Condition #6 in regard to hours of operation and offered his recommendation for wording.

Rea talked about Saturday operations and hauling.

Krueger stated what his intentions are and said he would be okay with a “no hauling after noon” stipulation.

Hash talked about condition #14 regarding landscape buffering.

Holland (*Staff*) said she is willing to remove this condition because they don’t want to negatively impact neighbors. She also talked about condition #15 with the Board.

Hollinger said condition #15 could possibly be struck.

Hash asked Staff's opinion about conditions #17, 18, and 19 and discussed road and traffic issues.

The Board, Staff, and the applicant discussed the issues and ways to address the concerns via reasonable conditions. They talked about adding a condition regarding signage to clarify that the pavement ends after so many feet and also that large trucks may be entering; Staff will amend condition #7. Conditions #24 and 25 were discussed; Staff read the two conditions as amended for the Board's consideration. They continued to discuss wording on conditions

Sagami said Krueger is a good guy but has a problem with the fact that he violated the law.

Hollinger said these guys do business on the honor system and that things happen. He said that LHC knows the rules and thinks they took advantage of Mr. Krueger.

Sagami thinks condition #4 should still limit the time period to 5 years.

MOTION

Hash made a motion seconded by Hollinger to adopt Staff Report FCU 06-02 as findings of fact, as amended, and grant the conditional use permit.

BOARD DISCUSSION

Holland (*Staff*) wanted to clarify a few conditions and said if the applicant feels burdened by 17,18, and 19 they can come back before the Board for reconsideration.

Sagami expressed concern that Krueger broke the law. He said not all people have a conscious when it comes to matters such as these.

Hash said this gravel pit proposal "fits" in this area. He said there is no magic answer but this Board has the ability to make good choices and do what's right considering the circumstances.

ROLL CALL

On a roll call vote the motion passed unanimously.

ZONING VARIANCE/ CAMAS PACK (FZV 06-01)

A request by Camas Pack, LLC for a Zoning Variance to property located in the North Fork Zoning district. Specifically, the variance is to Section 3.40.040(2b), (setbacks of new buildings from North Fork Road), and Section 3.40.050(3), (rental cabins: 1 for each 5 acres of contiguous property owned) of the Flathead County Zoning Regulations. The applicant intends to place three (3) rental cabins as close as thirty (30) feet to the North Fork Road right-of-way. The

property is located at 8855 North Fork Road in Polebridge, Montana.

STAFF REPORT

Nicole Lopez-Stickney of the Flathead County Planning & Zoning Office reviewed Staff Report FZV 06-01 for the Board.

APPLICANT

Greg Puckett, applicant, talked about the variance request and the outcome of the NFLUC meeting. He handed out a letter to the Board and proceeded to read it to the Board.

PUBLIC COMMENT

Gerry Wagrow, 635 Moose Creek Rd, is not opposed to 3 cabins on this space but would like to see a deed restriction put in place.

BOARD QUESTIONS

Lopez-Stickney (*Staff*) explained the North Fork zoning, although the State CAMA data may assess it as commercial.

Hollinger asked Staff for clarification of the regulations.

Sagami asked if the applicant could construct a 3-bedroom bed and breakfast as a permitted use.

Staff said yes, with DEQ approval.

Sagami asked for clarification on CAMA data in regards to classification of commercial use.

Lopez-Stickney (*Staff*) elaborated and mentioned they are concerned with maintaining the density of the area.

STAFF REBUTTAL

Harris (*Planning Director*) talked about the process and criteria Staff has to follow and that certain conditions have to be met. Staff doesn't have flexibility when administering certain regulations.

APPLICANT REBUTTAL

Puckett wanted to clarify they aren't necessarily going to do a bed and breakfast if this plan fails; they have to figure out how to plan something for this property. Going this route was the only way to be seen and get input by the NFLUC. He said they don't want to "screw up" the character of the area and said there really isn't a better site in the North Fork for this type of use.

BOARD DISCUSSION

The Board and Staff discussed the best way to handle this application.

MOTION

Hollinger made a motion seconded by Hash to adopt Staff Report FZV 06-01 as findings of fact and recommended denial of the variance.

BOARD DISCUSSION

Rea said the Board would be adopting a resolution, not granting a variance, which would be a more complicated process.

The applicant asked if he would have to come back before the Board for other uses.

Staff replied he would have to come back before the Board for a setback variance.

Hollinger brought up the possibility of doing a text amendment to the North Fork plan.

Harris said that wouldn't happen until the Growth policy is complete.

ROLL CALL

On a roll call vote the motion passed 4-1 with Sagami dissenting.

**ZONING VARIANCE/
GELORMINO
(FZV 06-03)**

A request by James and Vivian Gelormino for a Zoning Variance to property located in the Evergreen, R-3 (One-Family Limited Residential) Zoning District. Specifically, the variance is to Section 3.11.040 (3a), (minimum side setbacks) of the Flathead County Zoning Regulations. The applicant wishes to construct an attached garage to the principal structure, and is requesting a five (5) foot setback instead of the ten (10) foot required setback. The property is located at 95 Park Avenue.

STAFF REPORT

Nicole Lopez-Stickney of the Flathead County Planning & Zoning Office reviewed Staff Report FZV 06-03 for the Board.

APPLICANT

Jim Gelormino, applicant, briefly explained the reason for the variance request.

Klempel asked if they would be able to meet the minimum setback.

PUBLIC COMMENT

None.

STAFF REBUTTAL

None.

APPLICANT REBUTTAL

None.

MOTION

Sagami made a motion seconded by Hollinger to adopt Staff Report FZV 06-03 as findings of fact and recommended approval of the variance.

BOARD DISCUSSION	None.
ROLL CALL	On a roll call vote the motion passed unanimously.
OLD BUSINESS	None.
NEW BUSINESS	None.
ADJOURNMENT	The meeting was adjourned at approximately 10:40 p.m. The next meeting will be held at 6:00 p.m. on May 2, 2006.

Dennis Rea, President

Jill Goodnough, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 5/2/06